

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

MEWBOURNE OIL COMPANY,

Plaintiff,

vs.

ZENITH DRILLING CORPORATION,

Defendant.

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CAUSE NO. 6:09-CV-104-LED

**AGREED JOINT DOCKET CONTROL ORDER**

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

**August 6, 2009**

**Privilege Logs** to be exchanged by parties or notice filed with the Court stating that there are no disputes as to claims of privileged documents.

**September 4, 2009**

**Parties with burden of proof designate expert witnesses.**

Expert witness reports due.

Refer to Local Rules and Discovery Order for required information.

**September 15, 2009**

**Parties designate responsive expert witnesses.**

Expert witness reports due. Refer to Local Rules and Discovery Order for required information.

**October 6, 2009**

**Discovery Deadline.**

**October 20, 2009**

**Parties to Identify Trial Witnesses.**

**November 3, 2009**

**Dispositive Motions due from all parties and any other motions that may require a hearing (including Daubert motions) due.**

Court designated date  
Not flexible without good  
cause.

Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances.

**November 6, 2009**

**Mediation.** Mediation to be completed. Louis Selig, Selig ADR, 5009 Caroline St., Suite 100, Houston, Texas, 77004, Telephone – (713) 807-1707, is appointed as mediator in this cause. Mediation shall be conducted in accordance with the Court-Annexed Mediation Plan. See Appendix H to Local Rules, available on the Court's website at [www.txed.uscourts.gov](http://www.txed.uscourts.gov).

**November 10, 2009**

**Parties to Identify Rebuttal Trial Witnesses.**

**November 17, 2009**

Court designated date  
Not flexible without good  
cause - Motion Required

**Response to Dispositive Motions (including *Daubert* motions) due.** Responses to dispositive motions filed prior to the dispositive motion deadline, including *Daubert* motions, shall be due in accordance with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances.

**December 4, 2009**

**Joint Pretrial Order, Joint Proposed Jury Instructions** with citation to authority, and Form of the Verdict for jury trials. Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.

**Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings.** If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Shea Sloan, at [shea\\_sloan@txed.uscourts.gov](mailto:shea_sloan@txed.uscourts.gov).

**December 4, 2009**

**Video and Stenographic Deposition Designation due.** Each party who proposes to offer a deposition by video shall file a disclosure identifying the line and page numbers to be offered. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.

**December 11, 2009**

**Pretrial Disclosures due.**

**December 31, 2009**

**Rebuttal Designations and Objections to Deposition Testimony due.** For rebuttal designations, cross-examination line and page numbers to be included.

**January 7, 2010**

**Objections to Rebuttal Deposition Testimony due.**

**January 14, 2010**

**Pretrial Objections to Pretrial Disclosures due.**

**January 19, 2010**

**Motions in Limine due.** The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.

**January 19, 2010**

**Parties to file estimates of the amount of time** they request at jury selection and trial for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.

**5 Days**

**Estimated Length of trial.**

**January 21, 2010**

**9:00 a.m. PRETRIAL CONFERENCE** at the United States District Court, 211 W. Ferguson, 3<sup>rd</sup> Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.

Court designated date –  
not flexible without good  
cause Motion Required

**All pending motions will be heard.**

**Lead trial counsel must attend the pretrial conference**

**February 1, 2010**

**9:00 a.m. JURY SELECTION** at the United States District Court, 211 W. Ferguson, 3<sup>rd</sup> Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.

Court designated date –  
not flexible without good  
cause Motion Required

**February 8, 2010**

**9:00 a.m. JURY TRIAL as reached** at the United States District Court, 211 W. Ferguson, 3<sup>rd</sup> Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.

Court designated date –  
not flexible without good  
cause Motion Required

**EXHIBITS & EXHIBIT LISTS:** Each party shall provide the Court with one set of exhibits and three copies of the exhibit list. The Court's preferred format for Exhibit Lists is available on the Court's website at [www.txcd.uscourts.gov](http://www.txcd.uscourts.gov) under "Orders & Forms." The parties are further requested to have all exhibits labeled with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. At the conclusion of the evidentiary phase of trial, each party shall be responsible for pulling those exhibits admitted at trial to be submitted to the jury. In addition, each party shall submit to the Court a Final Exhibit List of all of their exhibits admitted during trial. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom. Within two business days of the conclusion of trial, each party shall submit to the Court the following: (1) A disk or disks containing all admitted trial

exhibits in PDF format. If tangible exhibits were admitted, such exhibits shall be substituted with a photograph to be converted to a PDF file and shall be included in the Court's disk of admitted exhibits. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be copied on a separate disk. (2) A disk or disks containing the transcripts of Video Depositions played during trial, along with a copy of the actual video deposition. After verification of exhibit lists by the Clerk, the lists shall be filed by the Clerk, and the disk or disks containing the exhibits in PDF format shall be stored in the Clerk's Office, Tyler Division.

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that "[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition." Local Rule CV-7(e) provides that a party opposing a motion has 15 days in which to serve and file supporting documents and briefs after which the Court will consider the submitted motion for decision.

#### **OTHER LIMITATIONS**

- (a) All depositions to be read into evidence as part of the parties' case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (b) The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
  - (i) The fact that there are motions for summary judgment or motions to dismiss pending;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**So ORDERED and SIGNED THIS \_\_\_\_ day of May, 2009.**

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LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE